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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,935	09/25/2003	Christian Schmitt	P03,0376	2040

26574 7590 01/25/2006

SCHIFF HARDIN, LLP  
PATENT DEPARTMENT  
6600 SEARS TOWER  
CHICAGO, IL 60606-6473

EXAMINER
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SAN MARTIN, EDGARDO

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

3/6

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/670,935	SCHMITT, CHRISTIAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Edgardo San Martin	2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/23/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 – 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buettner (US 4,831,655) in view of Olsen (EP 0 988 776).

With respect to claim 1, Buettner teaches a hearing aid device wearable in the ear with a housing comprising at least one acceptance (Fig.3, Items 30 and 32) for pivoted attachment configured to swivel in and swivel out a battery loader (Fig.3), a housing opening (Fig.3, Item 48) through which the battery loader can be swiveled in and swiveled out (Fig.3; Col.2, Line 4 – Col.3, Lines 31); but fails to disclose a stabilization element to stabilize the housing in the area of the housing opening, attached to the housing and at least partially surrounding the housing opening.

On the other hand, Olsen teaches a hearing device (Fig.1) comprising a battery loader (Fig.1, Item 3) and a stabilization element (Figs.2, 6 and 7) to stabilize the housing in the area of the housing opening, attached to the housing (Fig.2) and at least partially surrounding the housing opening (Figs.1, 2, 6 and 7; ¶ [0015] – [0021], [0024] – [0025] and [0033]).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Olsen configuration with the Buettner design

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because the Olsen configuration would provide a secure attachment of the battery loader to the housing in addition to provide the electric connections needed to supply energy from the battery to the electronic control system.

With respect to claims 2 – 5, Olsen teaches the limitations described in the claims (Figs.2, 6 and 7; ¶ [0015] – [0021], [0024] – [0025] and [0033]).

### ***Conclusion***

2. The attached hereto PTO Form 892 lists prior art made of record that the Examiner considered it pertinent to applicant's disclosure.

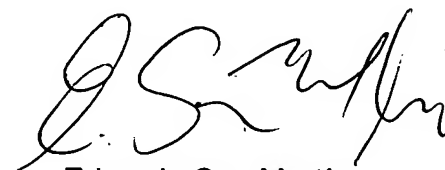
### ***Contact Information***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571) 272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on (571) 272-2800 ext.33. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Edgardo San Martin', is positioned above the printed name and title.

Edgardo San Martin  
Primary Examiner  
Art Unit 2837  
Class 181  
January 23, 2006